

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 6591 of 2002****With****SPECIAL CIVIL APPLICATION No. 15533 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SUNILBHAI TALAVIA & 5 - Petitioner(s)

Versus**STATE OF GUJARAT & 3 - Respondent(s)****Appearance :**

M/S.VYAS ASSOCIATES for Petitioner(s) : 1 - 6.
 MR SIRAJ GORI AGP for Respondent(s) : 1 - 2.
 RULE SERVED BY DS for Respondent(s) : 1,
 MR CHETAN K PANDYA for Respondent(s) : 3,
 MR BS PATEL for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 16/11/2005****ORAL JUDGMENT**

1. In Special Civil Application No. 6591/2002, the petitioners have challenged an order dated 17th July, 2002 passed by the Director of Municipalities by which the petitioners were removed from the position of members of the committee of Town Planning as well as councillors of

the Bardoli Municipality. In Special Civil Application No. 15533/2003 the petitioners have challenged an order dated 10th October, 2003 similarly removing the petitioners from the position of members of the Bardoli Municipality.

2. In Special Civil Application No. 6591/2002 on 18/7/2002 this Court granted interim relief staying the operation of the impugned order dated 17/7/2002 in so far as the same relates to removal of the petitioners as the councillors of the municipality. Similarly in Special Civil Application No. 15533/2003 by order dated 11/11/2003 this Court while admitting the petition granted stay against the operation of the impugned order of removal of the petitioners from the position of members of municipality. These stay orders granted in favour of the petitioners have remained in operation till date. Effectively, therefore, all these orders passed by the Director of Municipalities seeking to remove the petitioners from the position of councillors of municipality have remained in abeyance and the petitioners have under the orders of the Court discharged their duties as councillors. It is stated on behalf of the petitioners by learned Senior Advocate Shri Vyas that

the term of the Bardoli Municipality has come to an end and a newly elected municipality has been installed recently. It is further pointed out that out of the petitioners involved in these petitions only Shri Dipak Shah who is petitioner no.2 in Special Civil Application No. 6591/2002 and petitioner no.7 in Special Civil Application No. 15533/2003 has successfully contested the fresh elections. In so far as the question of removal of the petitioners from the position of members of the committee as also from the position of members of the Municipal Council is concerned, the same has lost its significance by afflux of time and subsequent developments. Learned Senior Advocate Shri Vyas however pointed out that such removal attaches disqualification for a period upto four years from the date of such removal. In this regard he pointed out provisions of Sub Section 1 of Section 11 of Gujarat Municipalities Act, 1963 which read as under:

11.(1) no person may be a councillor-

(a) Who-

(i) has, whether before or after the commencement of this Act, been convicted by a court in India-

(a) of an offence under [the Untouchability (offences) Act, 1955] or under the Bombay Prohibition Act, 1949; or

(b) of any other offence and sentenced to imprisonment for not less than six months,

unless a period of four years or such lesser period as the State Government may allow in any particular case, has elapsed since his conviction and where he was sentenced to imprisonment, since his release; or

(ii) has been removed from office under section 37 and four years have not elapsed from the date of such removal, unless he has, by an order which the State Government is hereby empowered to make, if it shall think fit, in this behalf, been relieved from the disqualification arising on account of such removal from office; or

(b) who is an uncertificated bankrupt or an undischarged insolvent; or

(c) who is of unsound mind and stands so declared by a competent court; or

(d) who is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgment of allegiance or adherence to a foreign State; or

(e) who is a Judge; or

(f) who is a salaried servant of Government or of a panchayat or municipality.

2.1 On the basis of above provisions learned advocate Shri Vyas submitted that the State Government is empowered to relieve the councillor who has been removed in exercise of powers under Section 37 of the Gujarat Municipalities Act, 1963 from the disqualification arising on account of such removal from office. He submitted that the petitioner no.2 of Special Civil Application No. 6591/2002 Shri Dipak Shah would like to approach the State Government requesting the State Government to consider his case of removing the disqualification. He submitted that some other

petitioners also may adopt such a course of action. He further submitted that if the State Government accepts the request of such petitioners, entire issue of legality of the impugned orders of removal would become one of academic interest and need not be decided in the present petitions. He further submitted that in case the State Government takes a decision adverse to such petitioners, the petitioners would like to press their challenge against the order of removal in a proper manner.

3. Learned AGP Shri Gori submitted that though the State Government is in a position to justify the orders under challenge, if the petitioners wish to approach the State Government by making a proper application for relieving the disqualification pursuant to the order of removal, there can be no harm to permit the petitioners to do so.

4. In view of the above discussion petitions are disposed of by providing for following directions:

(1) It will be open for all or any other petitioners involved herein to approach the State Government requesting the State Government to relieve the

disqualification arising out of their removal by impugned orders in terms of provisions of Section 11(1) (a)(ii) of the Gujarat Municipalities Act, 1963. If such applications are made within a period of three weeks from today, the State Government shall consider the same on merits and dispose of the same as expeditiously as possible and preferably within a period of three months from the date of receipt of such applications. If such decision of the State Government is adverse to the petitioners, it will be open for the petitioners to revive their challenge to the impugned orders of the removal as also challenge the order that may be passed by the State Government.

(2) until such time the State Government takes decision in this regard and for a period of two weeks after its communication to the petitioners interim stay granted against the removal orders shall remain in operation.

5. With these directions, petitions are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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